

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SAID GSSIME,

CV-09-5581 (JS) (ETB)

Plaintiff,

ANSWER TO
AMENDED COMPLAINT

- against -

DR. WATSON, OFFICER BARTEN,
OFFICER ROMAN and NASSAU
COUNTY,

Defendants.

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Defendant, Nassau County, by its attorney John Ciampoli, Nassau County Attorney, by
Peter A. Laserna, Deputy County Attorney, responds to the Complaint as follows:

**AS AND FOR AN ANSWER TO
JURISDICTION AND VENUE**

1. Denies knowledge or information sufficient to form a belief as to the allegations
contained in paragraph 1 of the Complaint and respectfully refers all questions of law to the court.

2. Denies knowledge or information sufficient to form a belief as to the allegations
contained in paragraph 2 of the Complaint and respectfully refers all questions of law to the court.

**AS AND FOR AN ANSWER TO
PARTIES**

3. Denies knowledge or information sufficient to form a belief as to the allegations
contained in paragraph 3 of the Complaint.

4. Denies knowledge or information sufficient to form a belief as to the allegations
contained in paragraph 4 of the Complaint.

5. Denies the allegations contained in paragraph 5 of the Complaint.

6. Denies the allegations contained in paragraph 6 of the Complaint.

7. Denies the allegations contained in paragraph 7 of the Complaint and respectfully refers all questions of law to the court.

**AS AND FOR AN ANSWER TO
FACTS**

8. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8 of the Complaint.

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 of the Complaint.

**AS AND FOR AN ANSWER TO
DEFENDANT NO. 2 OFFICER BARTEN**

10. Denies the allegations contained in paragraph 10 of the Complaint and further notes that pursuant to your Honor's Memorandum & Order dated March 19, 2013, docket entry 57, the individual referred to in paragraph 10 is no longer a defendant.

11. Denies the allegations contained in paragraph 11 of the Complaint and further notes that pursuant to your Honor's Memorandum & Order dated March 19, 2013, docket entry 57, the individual referred to in paragraph 11 is no longer a defendant.

12. Denies the allegations contained in paragraph 12 of the Complaint and further notes that pursuant to your Honor's Memorandum & Order dated March 19, 2013, docket entry 57, the individual referred to in paragraph 12 is no longer a defendant.

13. Denies the allegations contained in paragraph 13 of the Complaint and further notes that pursuant to your Honor's Memorandum & Order dated March 19, 2013, docket entry 57, the individual referred to in paragraph 13 is no longer a defendant.

**AS AND FOR AN ANSWER TO
DEFENDANT NO. 3 OFFICER ROMAN**

14. Denies the allegations contained in paragraph 14 of the Complaint and further notes that pursuant to your Honor's Memorandum & Order dated March 19, 2013, docket entry 57, the individual referred to in paragraph 14 is no longer a defendant.

15. Denies the allegations contained in paragraph 15 of the Complaint and further notes that pursuant to your Honor's Memorandum & Order dated March 19, 2013, docket entry 57, the individual referred to in paragraph 15 is no longer a defendant.

16. Denies the allegations contained in paragraph 16 of the Complaint and further notes that pursuant to your Honor's Memorandum & Order dated March 19, 2013, docket entry 57, the individual referred to in paragraph 16 is no longer a defendant.

17. Denies the allegations contained in paragraph 17 of the Complaint and further notes that pursuant to your Honor's Memorandum & Order dated March 19, 2013, docket entry 57, the individual referred to in paragraph 17 is no longer a defendant.

**AS AND FOR AN ANSWER TO
DEFENDANT NASSAU COUNTY**

18. Denies the allegations contained in paragraph 18 of the Complaint.

19. Denies the allegations contained in paragraph 19 of the Complaint.

20. Denies the allegations contained in paragraph 20 of the Complaint.

21. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 21 of the Complaint.

**AS AND FOR AN ANSWER TO
NASSAU COUNTY GRIEVANCE PROCEDURE**

22. Denies the allegations contained in paragraph 22 of the Complaint.

**AS AND FOR AN ANSWER TO
RELIEF SEEKING PREVAILED ON THE AMENDED COMPLAINT**

23. Denies the allegations contained in paragraph 23 of the Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR COUNTY DEFENDANTS' FIRST AFFIRMATIVE DEFENSE

24. Plaintiff's Complaint and each and every claim set forth therein, fails to state a claim upon which relief can be granted.

AS AND FOR COUNTY DEFENDANTS' SECOND AFFIRMATIVE DEFENSE

25. The alleged acts or omissions of the named Defendants herein, and/or any agents, servants or employees, under the case of *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978), do not create vicarious liability against the County of Nassau pursuant to the doctrine of respondent superior and consequently the County of Nassau cannot be liable for any acts or conduct of any individual defendant herein, and/or agents, servants or employees with respect to any or all claims brought pursuant to 42 U.S.C. Section 1983.

AS AND FOR COUNTY DEFENDANTS' THIRD AFFIRMATIVE DEFENSE

26. The actions complained of herein were in full accord with the applicable law.

AS AND FOR COUNTY DEFENDANTS' FOURTH AFFIRMATIVE DEFENSE

27. Nassau County has not violated Plaintiff's Constitutional and statutory rights.

AS AND FOR COUNTY DEFENDANTS' FIFTH AFFIRMATIVE DEFENSE

28. That at all times herein mentioned and mentioned in the complaint, the correction officers, and/or agents, servants or employees of the Defendant County of Nassau, having

anything to do with the Plaintiff were in the performance of their respective duties as police officers, and/or agents, servants or employees of the Defendant County of Nassau; that all of the acts performed by each police officer, peace officer, and/or agent, servant or employee of the Defendant County of Nassau in connection with the Plaintiff were performed in good faith, without malice, and with reasonable and proper cause.

AS AND FOR COUNTY DEFENDANTS' SIXTH AFFIRMATIVE DEFENSE

29. Punitive damages may not be recovered against Nassau County as a matter of law.

AS AND FOR COUNTY DEFENDANTS' SEVENTH AFFIRMATIVE DEFENSE

30. Plaintiff has failed to exhaust his administrative remedies.

AS AND FOR COUNTY DEFENDANTS' EIGHTH AFFIRMATIVE DEFENSE

31. The County of Nassau, its agencies, departments and employees at all applicable times herein enjoyed a full, partial or qualified immunity from civil suit.

AS AND FOR COUNTY DEFENDANTS' NINTH AFFIRMATIVE DEFENSE

32. That should Plaintiff recover damages as a result of a finding of liability in whole or in part against County Defendants, such recovery should be reduced and diminished to the degree of comparative negligence of Plaintiff in contributing to such damage.

AS AND FOR COUNTY DEFENDANTS' TENTH AFFIRMATIVE DEFENSE

33. That if the Plaintiff sustained the damages as alleged in the Complaint, such damages were sustained solely through and by virtue of the negligent reckless and/or wrongful conduct of the Plaintiff without any negligence, reckless and/or wrongful conduct of the Defendant Nassau County, its agents servants or employees contributing thereto.

